

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7466

Investigation into Petition filed by Vermont
Department of Public Service re: Energy
Efficiency Utility Structure

REPLY BRIEF OF THE
VERMONT DEPARTMENT OF PUBLIC SERVICE

October 23, 2009

I. What length of term for an Order of Appointment will enable the retention of the existing three year performance periods while also facilitating the transition to the new structure?

Findings¹

45) The Department's proposal was designed to retain and facilitate the existing three year performance periods. Exh. DPS-WP-1-Revised.

46) The Department's 'Rolling Appointment' proposal, while characterized as an initial 6-year term followed by recurring 3-year appointment extensions, is essentially an initial 8-year term² followed by recurring 3-year appointment extensions, assuming positive performance. This proposal, in conjunction with the suggested PPR and OPA review cycles, was structured to address certain practical aspects of implementing a new Order of Appointment structure including:

- An opportunity for an Overall Performance Assessment before the beginning of the first appointment. Exh. DPS-WP-1-Revised Line 2.
- A smooth transition into the Order of Appointment structure from the current contract structure. Exh. DPS-WP-1-Revised Line 7.
- Maintenance of the current three year performance periods. Exh. DPS-WP-1-Revised Lines 1, 10, 17, 25 and 33.
- The ability to conduct the public process for setting budgets and Qualitative Performance Indicators (QPIs), soon after the initial appointment but before the beginning of the next three year performance period. Exh. DPS-WP-1-Revised Lines 4, 11, 18, and 26.
- Meaningful and appropriate regulatory review at predictable intervals that are synchronized with the three year performance periods. Exh. DPS-WP-1-Revised Lines 2, 14, 21, 30.

¹ The Department's findings of fact are sequentially numbered in the initial brief and this numbering continues in the reply brief.

² See DPS WP-1 Revised at Line 8. Under the DPS proposal, this initial appointment would be for a minimum of 6 years and a maximum of 8 years as it would begin immediately after a successful initial OPA. The sooner that this OPA was completed, the longer the initial term would be. As a practical matter, assuming that the current contractor is the presumptive appointee, the initial appointment would begin in the Spring or Summer of 2010.

Discussion

The Department's proposed term for the "Rolling Appointment" is the most practical of all the possible terms of appointment under consideration. The three year performance cycles have worked well for Vermont's EEU's and should be retained. No party to this docket has proposed otherwise. The current performance cycle runs from 2009-2011 as does the existing contract term for which the current budget and performance goals were set. Thus in order to preserve the 3-year performance cycles the first of those cycles under a new Order of Appointment should not begin until 2012.

The Department does not want to delay the transition to a new structure. We agree with the numerous other parties to this docket who urge the Board to begin the Order of Appointment as soon as possible. As contemplated in the Draft Recommendation³, the appointment itself can and should begin as soon as feasible⁴. Assuming a positive initial OPA, the Department's proposal adds the remainder of the contract term to a six year initial appointment resulting in an appointment of approximately eight years. This enables the continuation of the three year performance cycles and facilitates the transition and the new public budget and QPI setting processes while not exceeding the 12-year maximum term specified by existing law.

The Board and all parties to this docket are aware that operating an Energy Efficiency Utility under an Order of Appointment structure will be breaking new ground because this structure has not been implemented in any other jurisdiction. This is why no party to this proceeding can present any evidence beyond expert opinion as to what the

³ D 7466 Exhibit VEIC-5 *Draft Recommendation For a New Energy Efficiency Structure* June 16, 2008

⁴ The Department reiterates its position that no appointment should occur until an initial OPA has been conducted. An initial OPA will delay the first appointment, but the Department's testimony asserts that the benefit of conducting this review will outweigh the costs and delay it will entail.

proper length of the appointment should be. While current law permits a maximum appointment of 12 years, if such an appointment began in 2010 as proposed by VEIC, it would by statute have to end in 2022. This would not match existing performance cycles. The only way to get an appointment of 12 years synchronized with the existing three year cycles will require either an initial appointment shorter than 12 years or changing the performance cycles, and the Department's proposal elects the former alternative, as there is no benefit, and some potential detriment to the latter.

II. In the context of this Docket, should the Board consider whether the obligations of distribution utilities under 30 V.S.A. 218c(a) and (b) are satisfied in full by activities of the EEU?

Findings

47) It is premature to fully remove the obligation of distribution utilities (DUs) to fund Demand-side Management (DSM) programs in their own service territories. Poor reb. at 11.

48) Some DSM obligations formerly assigned to DUs, such as geotargeted efficiency programs, are now being delivered within Vermont by the EEU. CVPS Initial Brief at 11.

49) Geotargeting is a relatively new initiative, and has yet to be fully reviewed. Poor reb. at 11.

50) The issue of distribution utility responsibilities being transferred to an energy efficiency utility is not fundamental to the structure of an EEU. Poor reb. at 11.

Discussion

Central Vermont Public Service (CVPS) recommends that the activities of an EEU should be in place of utility-specific programs developed pursuant to 30 V.S.A. §218c and should be deemed by the PSB to satisfy the distribution utilities' obligations under sections 218c(a)(2) and (b). CVPS Initial Brief at 6. Currently, area utility specific programs, termed "geotargeted" programs, are being delivered in Vermont by the EEU. However, geotargeting is a relatively new initiative, and the processes and impacts of this initiative have not yet been fully evaluated. Thus, it would be premature for the Board to entirely remove responsibilities of the distribution utilities to offer demand side management programs to customers in their territories on the basis that an appointed EEU should implement these programs. Further, the implications of such a shift in responsibility have not been thoroughly investigated nor discussed as part of this Docket. Because the issue is not fundamental to the structure of an EEU, the Board should defer consideration.

III. Should the structure of any Order of Appointment designate which measures an EEU should be allowed to pursue to achieve energy efficiency savings?

Findings

51) The specific designation of which measures an EEU should be allowed to pursue in fulfillment of its duties is not fundamental to the overall structure of an EEU. Poor reb. at 12.

Discussion

CVPS recommends that an appointment explicitly allow an EEU to pursue societally cost-effective measures regardless of whether they convert from electro- to non electro- technologies or *visa versa*. CVPS Initial Brief at 7. Fuel switching that *increases* statewide electric load may not be an appropriate use of electric ratepayer funds collected for the purpose of *electric* energy efficiency. This issue has not been fully investigated by all parties, including the Department, and it is not fundamental to the structure of an EEU. Further, explicit authorization is not needed in this Docket in order for an EEU to propose such measures in the future. Thus, the Board should defer consideration of this issue.

IV. How should the Board assign any duties related to outstanding commitments or obligations of an EEU in the event of termination of an Appointment?

Findings

52) The Board should determine how obligations or commitments entered into by an EEU should be reassigned in the event of termination of that EEU's appointment at the time of termination. Poor reb. at 12.

53) Parts VI.2.D.vii and viii of the Draft Recommendation state that the responsibility for outstanding contracts for customer incentive payments (vii) and outstanding commitments made as part of its responsibilities as an EEU (viii) "from the date of termination forward will be assigned by the *Board* to the new entity serving as an *EEU*, or the DUs [distribution utilities] if appropriate should there be no successor *EEU*." D

7466 Exhibit VEIC-5 *Draft Recommendation For a New Energy Efficiency Structure*

June 16, 2008.

Discussion

In the event of termination of an EEU appointment, the Board should maintain flexibility to assign outstanding responsibilities and commitments of an EEU as it deems in the best interest of ratepayers. In certain situations, such as where there is no successor EEU, the Distribution Utilities are in fact the most logical entities to fulfill such duties. Each version of the Draft Recommendation recognizes this possibility. Precluding any entity from being assigned such responsibilities, as CVPS suggests (CVPS Initial Brief at 8), would unduly restrict the Board's flexibility and would not be in the best interests of Vermont ratepayers.


Conclusion

The Department's term proposal for the rolling appointment is a practical and workable alternative that addresses a variety of transition issues while retaining the three year performance periods in their current form. The issues raised by CVPS concerning the relationship between DUs and the EEU under an Order of Appointment structure are not central to the creation of that structure and it is premature to address them at this time.

Dated at Montpelier, Vermont this 23rd day of October, 2009.

VERMONT DEPARTMENT OF PUBLIC SERVICE

By: _____


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cc: Service list